



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,033	07/25/2003	Paul Harold Bryson	66140P029	3354

8791 7590 10/10/2006

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/628,033	BRYSON ET AL.	
	Examiner	Art Unit	
	Gina C. Yu	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 25, 2006 has been entered.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 5, 7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke et al. (US 4818523).

Clarke et al. disclose a hair-conditioning composition comprising 0.50 % of a glycol (propylene glycol), 1 % of a silicone (cyclomethicone), 1 % of a quaternium (dodecyl trimethyl ammonium chloride), and a polymeric thickener (hydroxyethylcellulose). See . See Example 2; col. 9, lines 20 – 52; instant claims 1 and 7

The reference teaches that cyclic or linear silicone is used in amount of about 0.5 – about 1.5 %, which is either within, overlapping or touching 2 %. See col. 6, lines 41 – 58. The composition also comprises Germaben II, which is a mixture of parabens. See instant claim 13. The reference teaches making the composition in the range of pH 3-4.

Art Unit: 1617

See col. 9, lines 20-51. See instant claims 1 and 4. Less than 1 % of an alpha-hydroxy acid includes zero content of the component. See instant claim 5. See also col. 8, lines 44 – 48, which teach using citric acid to adjust pH if needed.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 6-9, 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Espinoza (US 6709773 B2) in view of Flick (Cosmetic and Toiletry Formulations, 1997).

Espinoza teaches multivesicular emulsion drug delivery composition. The reference teaches using a mixture of behenyltrimonium methosulfate and cetearyl alcohol as an emulsifier. See col. 2, line 61 – col. 3, line 60. See instant claims 9 and 11. The reference illustrates an alpha hydroxy acid (AHA) cream comprising 83.5 % of water, 3 % of butylenes glycol, 3 % of Incroquat Behenyl TMS (behentrimonium methosulfate 25 %), cetyl alcohol, and sesame oil (vegetable oil). See instant claims 1, 6, 7, 9, 11. A sample sunscreen lotion formulation contains 3 % of Incroquat Behenyl TMS, 4 % of glycerin, 66.2 % of water, and avocado oil. See instant claims 1, 6, 11-13. Glycols including glycerin, propylene glycol, and butylene glycol are also taught as solvent and moisturizers in col. 5, lines 3-10 and lines 37 – 55, and used in sample formulations. Preservatives including parabens are taught in col. 5, lines 24 – 37. The reference also teaches that moisturizers dimethicone and cyclomethicone are used in 1

Art Unit: 1617

% and 5 %, respectively, by weight of a composition. See Self-tanning cream in col. 6, line 62 – col. 7, line 9; col. 5, lines 38 – 56.

While the specific examples employ cetyl alcohol and stearyl alcohol, which function as viscosity modifier, the reference also teaches in the specification polymeric viscosity modulator such as hydroxyethylcellulose, xanthan gum, and veegum. See col. 4, line 55 – col. 5, line 2. See instant claims 1, 6, and 15. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of the sample formulation by adding the polymeric viscosity modifiers as taught by the reference to adjust the viscosity of the composition.

Espinoza does not specifically teach the pH of the prior art compositions. The reference mentions that hydroxyethylcellulose is compatible with strontium nitrate and is stable at pH values around 3, which implies the suitable pH range of the prior art compositions. See col. 5, lines 1-2.

Flick teaches to adjust pH of a glycolic acid moisturizing lotion to 3.0-3.5. See p. 209, AHA Moisturizing Lotion. See instant claims 1, 4, and 15.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to adjust the pH of the AHA cream composition of Espinoza to 3.0 – 3.5, as motivated by Flick, because the latter also teaches a glycolic acid lotion composition. The skilled artisan would have had a reasonable expectation of successfully producing a glycolic acid cream composition with a pH that is suitable for topical application and stabilizes the composition.

The claimed method of topically applying the cream composition by rubbing and leaving-on the composition on the skin is an obvious use of the topical product. See instant claim 15.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Espinoza and Flick as applied to claims 1, 4, 6-9, 13-15 as above, and further in view of Cosmetics Additives (1991).

The Espinoza reference and the formulation on p. 209 of Flick fail to teach the viscosity modulators of instant claim 10.

Flick teaches in the same reference a W/O cream formulation which comprises almond oil and propylene glycol dicaprylate/dicaprate. See page 150. However, the combined references fail to teach a specific motivation to select these ingredients.

Cosmetics Additives teaches that propylene glycol dicaprylate/dicaprate is a luxuriant emollient, moisturizers with excellent lubricity and non-oily skin deposition for creams and lotions. See p. 415; instant claim 10.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of the combined references by adding propylene glycol dicaprylate/dicaprate as motivated by Cosmetics Additives because the latter teaches that it provides luxuriant emolliency and non-oily skin deposition of the cream composition. The skilled artisan would have had a reasonable expectation of successfully producing a stable skin cream composition with enhanced emolliency and skin feel.

Response to Arguments

Applicant's arguments filed on July 25, 2006 have been fully considered but they are not persuasive in part and moot in view of new ground of rejection in part.

Applicants' arguments with respect to the anticipation rejection made in view of Flick (2001) are moot, as the rejection has been withdrawn in view of claim amendment made by applicants.

Applicants' arguments regarding to the anticipation rejection made in view of Braun et al. (Rheology Modifiers Handbook) are moot, as the rejection has been withdrawn in view of the claim amendment.

Regarding the anticipation rejection made in view of Clark et al. applicants assert that the reference fails to teach the claimed amount of silicone. As discussed above, examiner maintains the position that "about 1.5 %" is not merely close to 2%, but is either within, overlapping or touching 2 %.

Applicants' arguments regarding the obviousness rejection made in view of Flick (1997) are persuasive in part and withdrawn. However, examiner respectfully disagrees with applicants' remarks with respect to the method claim, claim 15. Applicants assert that the prior art does not necessarily teach the claimed method step of rubbing the composition into the skin because there are other ways to distribute the composition, such as spray or bath. Examiner reiterates that the prior art composition is a cream, which is to be spread and rubbed on the skin because of the viscosity and rheology of the composition. Applicants assert that the composition "may be applied to the skin without rubbing and/or removed after application. The AHA cream compositions in Espinoza and Flick are obviously used to deliver glycolic acid, and it is obvious that the

Art Unit: 1617

composition is to be remained on the skin rather than washed off after application. These compositions are not in the form of spray or powder as applicants suggest. Cosmetic Additives also suggest that lubricity is a desirable feature of a cream composition, which indicates that creams are to be applied by rubbing. The burden is on the applicant to show that the obvious method of applying the skin cream of Espinoza is not as indicated by the examiner.

Applicants' remarks with respect to each of the rejections made in view of Patt (US 6927205) and Espinoza are moot, as the rejections are withdrawn in view of the claim amendment.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



9/30/06

Gina C. Yu
Patent Examiner